IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 477

ATLANTIC COAST LINE RAILROAD COMPANY,

Petitioner,

—v.—

BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE DIVISION 823 of THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS; J. E. EASON, individually and as an official of said Brotherhood; J. D. SIMS, individually and as an official of said Brotherhood; H. M. SAWYER, individually and as a member of said Brotherhood; W. K. MORRIS, individually and as a member of said Brotherhood; and G. W. RUTLAND, individually and as a member of said Brotherhood,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF FOR PETITIONER

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A. The Anti-Injunction Statute, Section 2283 of the Judicial Code

1. Respondents insist that the Federal District Court's April 26, 1967, order (Pet. App. A, pp. 1a-5a) amounts to a comprehensive declaration of the rights of the ACL, a third party to the labor dispute between the FEC and the BLE (Br. Op., pp. 12-13), rather than an order denying the ACL

temporary injunctive relief on the basis of the Norris-LaGuardia Act. While we do not believe that the way in which this point is resolved need have any legal consequences (see point 2, pp. 3-8, below), it is worthwhile to observe that, with one exception, each of the case authorities cited or relied upon by the District Court in its conclusions of law in that order itself turns on the Norris-LaGuardia Act.[1] See *Brotherhood of Locomotive Firemen and Enginemen* v. *Florida East Coast R. Co.*, 346 F.2d 673, 675 (5th Cir. 1965);[2] *Chicago & I.M.R. Co.* v. *Brotherhood of Railroad Trainmen*, 315 F.2d 771, 777-78 (7th Cir. 1963) (dissenting opinion of Swygert, J., relied upon by the District Court); *Brotherhood of Railroad Trainmen* v. *Atlantic Coast Line R. Co.*, 362 F.2d 649, 653-55 (5th Cir. 1966), *aff'd by an equally-divided Court*, 385 U.S. 20 (1966).[3] Thus, a perusal of the authorities cited by the District Court in its April 26, 1967, order makes it plain that the point of that order is that the Norris-LaGuardia Act prevented the issuance of a Federal court injunction against the secondary picketing charged in the complaint. As we pointed out in the petition (Pet., p. 24), the subsidiary conclusions of law of the District Court simply are articulations of the reasons why the Norris-LaGuardia Act was held applicable to bar the injunction, notwithstanding the "accommodation" cases which indicate that where the Railway Labor Act processes are

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[1] The exception is *Brotherhood of Locomotive Engineers* v. *Baltimore & O. R. Co.*, 372 U.S. 284 (1963). In that *per curiam* decision all that was held was that where the primary parties to a railway labor dispute have exhausted the procedures of the Railway Labor Act, they are entitled to use self-help against each other.

[2] "Thus, the literal language of the Norris-LaGuardia Act covers the situation presented here." 346 F.2d, at 675.

[3] "[W]e here deal only with the enjoinability of appellants' [the brotherhoods'] activity and not with its legality for any other purpose." 362 F.2d, at 653.

still available between the parties the Norris-LaGuardia Act does not bar an injunction.[4] Indeed, in the hearing which led to the April 26, 1967, order, counsel for the respondents expressly stated that he was basing his case solely on the bar of the Norris-LaGuardia Act. See Pet., p. 22, n. 8.[5]

2. In any event, whether the April 26, 1967, order of the District Court declining to issue an injunction against the secondary picketing amounted to a declaration of the ACL's substantive rights under Federal law or not, the District Court was still without power, under Section 2283, to enjoin the proceedings in the state court. Respondents contend that the District Court's June 19, 1969, action is authorized by the exceptions to Section 2283 which permit

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[4] Respondents repeatedly (Br. Op., pp. 7, 12) urge that the passing citation of § 20 of the Clayton Act, 29 U.S.C. § 52, in conclusion 7 of the District Court's April 26, 1967, order (Pet. App. A, p. 4a), establishes that the District Court's order in fact amounted to a declaration of the parties' substantive rights. The second paragraph of § 20 does contain a provision that certain acts enumerated in that paragraph shall not "be considered or held to be violations of any law of the United States." However, the first paragraph of the section, which is broader in scope, is a simple anti-injunction provision, a distant forebear of the Norris-LaGuardia Act. The District Court's order does not indicate whether it is relying on the first paragraph or the second paragraph of § 20. However, the two cases cited in conclusion 7, *Brotherhood of Locomotive Firemen and Enginemen, supra,* and *Brotherhood of Railroad Trainmen* v. *Atlantic Coast Line R. Co., supra,* are both simply anti-injunction cases; this makes it evident that the reference to § 20 of the Clayton Act simply was for the proposition that the respondents' conduct was not subject to Federal court injunction.

[5] The District Judge who entered the April 26, 1967, order was the same District Judge who had originally enjoined the picketing at the Jacksonville Terminal properties in 1966, only to be reversed by the Court of Appeals for the 5th Circuit in *Brotherhood of Railroad Trainmen* v. *Atlantic Coast Line R. Co.*, 362 F.2d 649, *affirmed by an equally-divided Court,* 385 U.S. 20 (1966), solely on the basis of the Norris-LaGuardia Act.

a District Court to enjoin state court proceedings "where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." But even a declaration by a Federal court as to the rights of the parties under Federal law[6]—or, more precisely, the absence of any right under Federal law for the ACL to obtain a Federal court injunction against the BLE—would not create a situation where it would be either "necessary in aid of its jurisdiction" or necessary "to protect or effectuate its judgments" for the District Court to enjoin the pursuit of state law remedies in the state courts by a party victimized by the secondary picketing.

The sole basis for the respondents' contention to the contrary is this Court's decision last term in *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369 (1969). That case is distinguishable factually and legally from the present one. See point 3, pp. 8-10, below. But even if it were not, there still would be no ground for an exception under Section 2283. In that decision, this Court expressly and repeatedly held that the Florida courts were not deprived of jurisdiction over a third party's suit against a railway labor organization to obtain relief from allegedly secondary picketing. 394 U.S., at 382, 390. Thus,

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[6] Even paragraph two of the respondents' favorite statutory antique, § 20 of the Clayton Act, only defines certain matters which are not "to be considered or held to be violations *of any law of the United States.*" See Br. Op., p. 7, emphasis supplied. Accordingly, the reference in passing to this statute in the District Court's April 26, 1967, order, even if we assume it is to paragraph two (see n. 4, p. 3, *supra*), hardly furnishes a basis on which it could be claimed that the state court proceedings under state law were an affront to the Federal court's jurisdiction or its judgment. This Court's decision in the *Jacksonville Terminal* case that in certain circumstances the state courts are precluded from applying state law in cases involving railway labor disputants does not rely on the Clayton Act at all, although the brotherhoods cited that Act nine times in their brief to this Court in that matter.

it cannot be alleged that the District Court's injunction against the state court proceedings was designed to aid an exclusive Federal jurisdiction. Contrast the principal authority relied on by respondents, *Capital Service, Inc.* v. *NLRB*, 347 U.S. 501, 504-05 (1954) (Br. Op., pp. 14-17). The Court in *Jacksonville Terminal* made it plain that in a suit by parties subject to the Railway Labor Act to enjoin secondary picketing under state law, the state courts had the power to apply state law, and that the only question was the extent to which this application was limited by "paramount Federal policies of nationwide import." 394 U.S., at 382.

Even if the Federal District Court had by its April 26, 1967, order declared the absence of any rights of ACL against respondents under Federal law, respondents never demonstrated why an injunction against the assertion of the ACL's state-created rights in state court would be necessary either in aid of the District Court's jurisdiction or to protect or effectuate the District Court's April 26, 1967, order. The proceedings in Federal court in 1967 were simply an effort by ACL to assert Federal law rights against BLE and the other respondents; the respondents filed no counterclaim and sought no declaration of whether they had a Federal-law defense against any proceedings that might later be filed in state court. No question of the defenses available to respondents against any suit which might be filed under state law ever entered into the April 26, 1967, order of the District Court. The existence of state law remedies is thus a matter separate and apart from the question of the Federal law rights and remedies of ACL said to have been adjudicated by the District Court in its April 26, 1967, order. Whatever that order did, it did not purport to pass on the availability of state-law remedies or

rights to the ACL, or the validity of any defense that might be interposed by the respondents thereto.

The normal method of review of the state court's June 3, 1969, action in finding a distinction between the picketing involved in the Jacksonville Terminal situation and that involved in the Moncrief Yard situation would have been for respondents to prosecute an appeal in the state courts, with review on certiorari available in this Court, as it was in *Jacksonville Terminal*.[7] Despite the plenary availability of appellate remedies in the Florida state courts—at the request of respondents, the Florida state court judge agreed to make the state court injunction permanent, so as to remove any question as to appealability (Pet. App. C, p. 15a)—the respondents, in the three and one-half months since the action of the state court, have not lifted a finger to have that decision reviewed in the normal course of state appellate practice.

As we shall once again recall in point 3, pp. 8-10 below, there are substantial grounds for distinguishing the situation at the Moncrief Yard from the situation at the Jacksonville Terminal properties. These distinctions indicate a difference in legal result as to whether state law remedies should be permitted to apply. Our basic position, however,

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[7] Apparently in an effort to sugar the pill of the District Court's violation of Section 2283, the respondents find it necessary to characterize the state court judge as displaying "complete intransigence" and as willfully continuing his injunction "in the face of what even he termed the 'final conclusion' of this Court." See Br. Op., p. 10. A reference to the state court judge's letter opinion makes it plain that he is referring to the "final conclusion" of this Court as to the Jacksonville Terminal situation, Pet. App. C, p. 14, and that his opinion simply makes a conscientious distinction of the *Jacksonville Terminal* case on its facts from the situation prevailing at the Moncrief Yard—a factual distinction which the respondents' Brief in Opposition hardly contradicts. See point 3, pp. 8-10, below.

is that Section 2283 does not contemplate that those questions will be ventilated in a proceeding in Federal court to enjoin an action in the state courts. That is the basic teaching of the *Richman Brothers* case, *Amalgamated Clothing Workers of America* v. *Richman Brothers Co.*, 348 U.S. 511 (1955).[8] The prosecution of state law remedies in the state court by the ACL did not affront the jurisdiction of the Federal District Court or any order which it had entered, even assuming that the April 26, 1967, order was a declaration of the parties' rights under Federal law. Clearly that order did not purport to pass on the availability of state law rights or remedies to the ACL, or the availability to the respondents of any Federal-law defense against ACL's state law remedies. Thus, the injunction here is not, in any view, "necessary in aid of its [the District Court's] jurisdiction, or to protect or effectuate its judgments."

All that the June, 1969, injunction proceedings in the District Court amounted to was a trial of a Federal-law defense to the ACL's state law suit in state court. Indeed, respondents themselves admit (Br. Op., p. 13) that prior to this Court's decision in the *Jacksonville Terminal* case there would have been no basis for the District Court's injunction against the state court proceedings. Respondents took no action for two years after the District Court's order of April 26, 1967, was entered to have the District Court enjoin proceedings in the state court, even though the ACL started those proceedings the very next day. It was only after this

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[8] For the reasons stated in the petition (Pet., p. 26, n. 17) the argument made commencing at Br. Op., p. 14, to the effect that *Richman Brothers* only held that a District Court may not enjoin proceedings in a state court where the Federal court has no jurisdiction itself, is completely erroneous. The respondents never explain why Section 2283 was necessary if all it does is to prevent a Federal District Court from enjoining state court proceedings simply in cases where the District Court does not have any subject matter jurisdiction itself.

Court's decision in *Jacksonville Terminal* that the District Court was asked to enjoin the proceedings in the state court. The question of the existence of a Federal-law defense to the state court proceedings was litigated in the Federal court for the first time in June, 1969. It is perfectly clear that what the District Court was actually called upon to do by the respondents in their June, 1969, motion for an injunction was not to aid its jurisdiction or to protect or effectuate its April 26, 1967, order, but belatedly to try the validity of an asserted Federal-law defense to those state court proceedings. It is precisely the trial of such a Federal-law defense, even if it had been well founded, that the *Richman Brothers* case teaches may not be undertaken through an injunction proceeding in Federal court.[9]

3. Finally, even if it were somehow appropriate to try a Federal-law defense to a state court suit through injunction proceedings in a Federal District Court such as those commenced by the respondents, the fact of the matter is that the only authority cited by respondents for the prop-

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[9] Respondents rely (Br. Op., pp. 18-19) upon *United Industrial Workers* v. *Board of Trustees of Galveston Wharves*, 400 F.2d 320 (5th Cir. 1968), *cert. denied*, 395 U.S. 905 (1969). We distinguish that decision at pages 25-26 of the petition for certiorari. In an effort to press the application of that decision to the case at bar—despite the fact that its author, the Court of Appeals for the Fifth Circuit, did not rely on it here—the respondents cite the fact that in the so-called *Clerks* case, *Brotherhood of Railway & Steamship Clerks* v. *Florida East Coast R. Co.*, 384 U.S. 238 (1966), to which ACL was not a party, the Federal courts have entered orders requiring the FEC to bargain in good faith with its employees. (Br. Op., pp. 18-19)

Neither of the courts below relied upon the *Clerks* case, and for obvious reasons. That decision did not purport to delimit the extent under Federal law, let alone under state law, to which unions could use secondary pressures against carriers who were not a party to the labor dispute. It is hard to see how preventing the BLE from shutting down ACL's classification yard could be said to interfere with the performance by the FEC of its duties to bargain in good faith.

osition that state-created remedies are not available to the ACL against the secondary picketing involved here is the *Jacksonville Terminal* case, *Brotherhood of Railroad Trainmen* v. *Jacksonville Terminal Co.*, 394 U.S. 369 (1969). In the petition for certiorari we extensively developed the factual differences between the Jacksonville Terminal property, jointly owned by one of the disputants and the other carriers, and the Moncrief Yard facility, wholly-owned by the ACL. See Pet., pp. 6-10. We analyzed the decision in the *Jacksonville Terminal* case to demonstrate that these extensive factual differences amount to a legal distinction. See Pet., pp. 28-32.

The respondents have made no serious effort to controvert the factual distinctions we have urged. Instead, they seize upon a short passage in the plurality four-to-three opinion in the *Jacksonville Terminal* case, 394 U.S., at 392-93, and cite it as a *carte blanche* for railroad unions to escalate railway labor disputes by engaging in any and all secondary activities against third parties, free of any restraint imposed by the state courts under state law. See Br. Op., p. 9. For the reasons stated at length in the petition, these expressions must be read in the context of the common situs operation which the jointly-owned Jacksonville Terminal property was found to constitute. We need not detail again the extensive factors of common operation and use involving the FEC which the Court found to exist with respect to the Jacksonville Terminal properties.

Here, it is undisputed that the primary function of the Moncrief Yard—which is wholly-owned by the ACL and in whose operations the FEC has no say whatsoever—is to serve as a classification yard for the ACL. To be sure, the ACL and the FEC do perform interchange at the yard, but the function of the FEC is simply to deliver

cars to the ACL there and to pick up cars from the ACL which are destined to it. This pick-up and delivery function is entirely different from that which was found to prevail at the Jacksonville Terminal facilities. It may be so that a substantial amount of the cars which the FEC ultimately handles are picked up by it at Moncrief Yard (see Br. Op., p. 6), but this hardly makes the primary function of the Moncrief Yard the performance of interchange with the FEC.[10] See the statistics we cite at page 7 of the petition. Yet on the basis of this incidental use of the Moncrief Yard for FEC-ACL interchange, the respondents claim the right without interference from any tribunal to engage in picketing activities which indisputably will shut down the operation of the entire Moncrief Yard.

Accordingly, even if somehow it was appropriate for the District Court to consider the matter, the picketing involved here is not protected by Federal law. Therefore, even if we assume that enjoining state-law based proceedings in a state court against picketing which is protected by Federal law were somehow an action necessary in aid of a District Court's jurisdiction or necessary to protect or effectuate its judgments, the District Court's action here would still be violative of Section 2283.

B. The Norris-LaGuardia Act

The respondents' arguments as to the nonapplicability of the Norris-LaGuardia Act (Br. Op., pp. 19-22) simply

[10] The respondents make much (Br. Op., p. 6) of the fact that FEC crews daily "operated over two-thirds of the length of the Moncrief Yard." All this means is that the FEC crews had to go two-thirds of the way down the yard to pick up and deliver their cars. (McRae Tr. 102) Only one track out of the many tracks at this major classification yard was assigned for this purpose. The facts are clear that ACL-FEC interchange was not a primary function of the Moncrief Yard. (See Pet., p. 7)

underscore the serious nature of the contentions made in the petition under that Act.

1. Respondents begin by misstating the effect of Sections 4 and 7 of the Norris-LaGuardia Act. It is said that Section 7 only applies to acts protected by Section 4 (Br. Op., p. 20). But Section 7's prohibitions are not limited by Section 4; on their faces, each of the sections is an independent prohibition. Section 7 applies to "any case involving or growing out of a labor dispute," as this case was held to be. Yet there was no semblance of compliance with the requisite Section 7 procedures and findings here by the District Court. For this reason alone, the District Court's order violated Section 7 of the Act.

2. Moreover, Section 4(d) of the Act was violated by the District Court's injunction. It is fatuous to argue, as the respondents do (Br. Op., p. 20), that Section 4(d) prohibits an injunction against persons aiding the ACL in its attempts to obtain a state court remedy, but does not prevent an injunction against the prosecution of that state court remedy. Moreover, on its face the injunction prohibits not only the enforcement of state court remedies but collective and concerted action in enforcement of them. (See Pet. App. D, p. 18a)

3. The primary thrust of the respondents on this point is that the Norris-LaGuardia Act does not apply with respect to injunctions against management at all. (Br. Op., pp. 20-21) As we pointed out in our petition (Pet., p. 34) this Court has never enunciated any such proposition, and the necessary assertion of so broad a proposition in support of the District Court's order itself suggests the appropriateness of this Court's review.

CONCLUSION

As Mr. Justice Black pointed out in granting the stay application, the issues presented under Section 2283 of the Judicial Code by the District Court's action are "highly complex and difficult." (See Pet. App. F, p. 22a). As he also observed (*id.*, at 23a), the questions are of widespread importance. Moreover, the issues we present as to the Norris-LaGuardia Act also merit this Court's review.

Accordingly, for the reasons stated in the petition for certiorari and herein, the petition for certiorari should be granted.

Respectfully submitted,

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